

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARCTIC SEA MINING LLC, an Alaska limited
liability company,

Plaintiff,

v.

ATLANTIC SPECIALTY INSURANCE
COMPANY, a Foreign corporation;
ENDURANCE AMERICAN INSURANCE
COMPANY, a Foreign corporation;
SUNDERLAND MARINE MUTUAL
INSURANCE COMPANY, LTD., a Foreign
corporation; and UNITED STATES FIRE
INSURANCE COMPANY, a Foreign
corporation,

Defendants.

No.:

COMPLAINT FOR DAMAGES

JURY DEMAND

Plaintiff ARCTIC SEA MINING LLC (“ASM” or “plaintiff”), by and through its counsel
of record, alleges as follows:

INTRODUCTION

1. This lawsuit arises from the defendants’ denial of insurance coverage, on a policy of
marine insurance, for damages to the plaintiff’s vessel, the MYRTLE IRENE, a *walking spud*

COMPLAINT FOR DAMAGES
Arctic Sea Mining LLC v. Atlantic Specialty Insurance Company, et al.
Case No.:

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1 *barge*. Plaintiff herein brings the following cause of action: (1) breach of insurance contract
 2 based on defendants' wrongful denial of coverage.

3 PARTIES

4 2. Plaintiff, ASM, is an Alaska limited liability company with its principal place of
 5 business in Nome, Alaska. Plaintiff is a gold-mining company that owns and operates the
 6 vessel MYRTLE IRENE, a *walking spud barge*, employed for the purpose of dredging for gold
 7 on the Alaskan shores in or about the waters of Nome, Alaska.

8 3. Pursuant to information and belief, defendant Atlantic Specialty Insurance Company
 9 ("Atlantic") is a foreign corporation organized under the laws of the State of New York with
 10 its principal place of business in Minnetonka, Minnesota. At all material times herein,
 11 Atlantic operated through its managing general agent International Marine Underwriters
 12 ("IMU").

13 4. Pursuant to information and belief, defendant Endurance American Insurance
 14 Company ("Endurance") is a foreign corporation organized under the laws of the State of
 15 Delaware, with its principal place of business in New York, New York.

16 5. Pursuant to information and belief, defendant Sunderland Marine Mutual Insurance
 17 Company, Ltd. ("Sunderland") is a foreign corporation domiciled in and organized under the
 18 laws of the United Kingdom. At all material times herein, Sunderland operated through its
 19 managing general agent Harlock Murray Underwriting ("HMU").

20 6. Pursuant to information and belief, defendant United States Fire Insurance Company
 21 ("US Fire") is a foreign corporation organized under the laws of the State of Delaware, with
 22 its principal place of business in Morristown, New Jersey. At all material times herein, US
 23 Fire operated through its managing general agent International Specialty, Inc. ("ISI").
 24
 25

1 7. Each of the defendants (hereinafter, collectively the “defendants” and/or
2 “Underwriters”) underwrote, bound, and subscribed to the policy of marine insurance that is
3 the subject of this lawsuit.

4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) as an action
6 between citizens of different states involving an amount in controversy in excess of
7 \$75,000.00.

8 9. This Court also has subject matter jurisdiction pursuant to this Court’s Admiralty
9 jurisdiction under 28 U.S.C. § 1333(1). However, plaintiff elects at this time to proceed at
10 law in diversity with a jury.

11 10. This Court has personal jurisdiction over the parties by virtue of the solicitation,
12 negotiation, contracting, issuance, delivery, and endorsement in this Judicial District of the
13 policy of marine insurance at issue in this matter, issued to plaintiff by defendants through
14 plaintiff’s insurance broker in this district.

15 11. Venue is proper in the United States District Court for the Western District of
16 Washington pursuant to 28 U.S.C. § 1391(b)(2), by virtue of the solicitation, negotiation,
17 contracting, issuance, delivery, and endorsement in this Judicial District of the policy of
18 marine insurance at issue in this matter, issued to plaintiff by defendants through plaintiff’s
19 insurance broker in Seattle.

20 **FACTS**

21 12. ASM purchased the MYRTLE IRENE in early 2014, for the purpose of employing her
22 as a gold mining dredge in Nome, Alaska, for the 2014 mining season and beyond. A 2009
23 survey of the vessel valued her at \$3 million dollars. Immediately after ASM purchased the
24 MYRTLE IRENE, ASM transited her to a shipyard to undergo necessary repair work and
25

1 maintenance. Subsequent to these repairs, she was surveyed again and valued at \$3 million
2 dollars.

3 13. The MYRTLE IRENE is not an ordinary barge, nor is she a typical spud barge; she is a
4 *walking spud barge*.

5 **I. Walking Spud Barges**

6 14. Walking spud barges are distinguishable from typical spud barges.

7 15. Typical spud barges have two to four “spuds”. Spuds are large cylinder-shaped
8 columns that are designed to stabilize the vessel on the surface of the water. To do this, the
9 spuds are lowered through holes in the barge (called “spud wells” or “spud pockets”), down
10 into the seafloor. Depending upon the depth of the water, when fully lowered, the spuds
11 appear partly above the deck, and partly below the deck. This stabilizes the vessel into an
12 affixed place. Typical spud barges are most often used for construction work. For example,
13 once secured, spud barges are ideally used as work platforms for cranes and other heavy
14 machinery.

15 16. Walking spud barges, on the other hand, have one or more “walking spuds” in
16 addition to having one or more regular “spuds”. The regular spuds on a walking spud barge
17 are called the “working spuds”. Walking spuds are designed to move both horizontally and
18 vertically, whereas the working spuds are only designed to move vertically. The purpose of
19 the horizontal movement is to allow the vessel to re-position itself without the use of a tug or
20 a propeller. This horizontal movement is achieved by the design of the walking spud pocket,
21 which is a rectangle-shaped cutout in the hull of the vessel. Inside the cutout is a trolley that
22 runs along a track system affixed to the hull. Trolleys are rectangle in shape, and are designed
23 to fit snugly inside the rectangle-shaped cutout in the hull of the vessel. The walking spud fits
24 in, and goes through, a hole in the trolley. Typically, the trolley is operated by a hydraulic
25 ram that extends from the static part of the hull to the trolley itself. The walking spuds and

1 the trolley allow the barge to “walk” on the seafloor. The walking process can be described
2 as follows:

- 3 i. With the barge beginning with all the spuds moored to the sea floor, the bow
4 walking spud is first raised from the sea floor, the trolley then moves forward to
5 the front of the spud pocket, the walking spud is then lowered back down to the
6 sea floor, the working spuds are then raised, and the trolley then moves back
7 toward the stern of the vessel, causing the vessel to be pulled forward by
8 approximately 4 to 18 feet in the water (depending on the length of the spud
9 pocket) before it is re-positioned and affixed to continue its work.

10 When observed in action, the vessel looks like it is inching forward in slow motion.

11 **II. The MYRTLE IRENE**

12 17. The MYRTLE IRENE is a *walking spud barge*. She is 120 feet long, and 45 feet wide.
13 She weighs 317 tons.

14 18. The MYRTLE IRENE has three spuds: one walking spud at the bow (the front) and two
15 working spuds at the stern (the back). Each spud is 70 feet in height, and 42 inches in
16 diameter. The MYRTLE IRENE’s walking spud is placed inside her trolley that is affixed on
17 rails inside her bow spud pocket. The trolley fits snug into the bow spud pocket so that it is
18 stabilized as part of, and with, the whole of the vessel. The MYRTLE IRENE’s trolley extends
19 both partly above the deck and partly below the deck, similar to the spuds themselves. The
20 trolley is moved back and forth by a hydraulic ram that connects the trolley to the static
21 portion of the MYRTLE IRENE’s hull. The hydraulic ram is located entirely below the deck of
22 the barge. The MYRTLE IRENE’s working spuds are located inside their respective stern spud
23 pockets, which are reinforced by steel welding. The spuds, the spud pockets, the trolley, and
24 the hydraulic ram are collectively hereinafter referred to as the MYRTLE IRENE’s “Spud
25 Elements”.

1 19. On the MYRTLE IRENE's deck, there are: winches, a generator, a crane, and an
2 excavator (hereinafter, collectively, her "Machinery").

3 20. All of the Spud Elements, and the Machinery were either on or were part of the
4 MYRTLE IRENE when she was surveyed in 2009 and in 2014. Each survey appraised her, as
5 a whole vessel, inclusive of the static portion of her hull, the Spud Elements and the
6 Machinery, at a total value of \$3 million dollars.

7 **III. The Insurance Policy**

8 21. ASM engaged the Seattle-based marine insurance brokerage firm MCM Insurance
9 Services, LLC ("MCM") in March of 2014, to obtain necessary insurance for ASM and the
10 MYRTLE IRENE. MCM began negotiating with the Underwriters, through their
11 representative lead underwriting agent, IMU.

12 22. MCM thereafter issued the marine insurance policy #MCM-14-028-HP (the "Policy")
13 to ASM on March 17, 2014. The Policy was underwritten and subscribed to by the
14 Underwriters, in equal 25% proportions, on the following premises:

- 15 i. The Policy consists of a "Hull & Machinery" form, and a "Protection &
16 Indemnity" form, in addition to a number of endorsements and conditions cited
17 within the Policy. At issue in this matter is the Hull & Machinery form, and
18 one condition: the Limited Machinery Coverage condition.
- 19 ii. The parties negotiated the Limited Machinery Coverage condition (the
20 "Excluding Condition"), attached hereto as Exhibit 1. The Excluding Condition
21 reads as follows:

22 Limited Machinery Coverage – it is agreed that coverage under
23 the Hull & Machinery form attached to and forming part of
24 this policy shall exclude any claim for loss, damage or
25 expense to any engine or other propulsion or electrical
generating machinery, crane, excavator or any other deck
machinery included with the hull unless such loss, damage or

expense is directly caused by fire, collision with another vessel or sinking resulting from a peril insured against.

- iii. The sum insured under the Hull & Machinery coverage is \$3,000,000.00, which is MYRTLE IRENE's "insured value". Underwriters derived this rate from the 2009 survey report, which valued the MYRTLE IRENE at \$3,000,000.00. Underwriters required \$93,000 in premium from ASM, as payment for the Hull & Machinery coverage alone, which was based off a "Hull Rate" of 3.10%. Underwriters charged ASM \$110,500.00 in total premium for the Policy, which ASM paid in full.

IV. The Claim

23. On September 22, 2014, a storm swept through the waters off the shores of Nome, Alaska, where the MYRTLE IRENE was engaged in gold dredging operations. The storm lasted for two days. At the inception of the storm, the crew of the MYRTLE IRENE attempted to retract her spuds and have her and her crew towed to safety. During the retraction, one of the spud cables snapped, causing the MYRTLE IRENE to be stuck in place, with one of her spuds lodged into the seabed. ASM immediately notified its insurance broker of the potential claim and received instructions to begin mitigating damages. ASM then hired a salvage team to un-lodge the vessel. The salvage team ultimately had to cut two of the spuds to free the MYRTLE IRENE from the grip of the ocean floor. The salvage team successfully saved the vessel from total ruin, but not before the storm caused significant damage to the MYRTLE IRENE.

24. ASM first notified defendants of the claim on September 23, 2014. Defendants hired their own marine surveyor, Richard Blomquist, to assess the damage. Mr. Blomquist performed the survey while the MYRTLE IRENE was still in the water in Nome, and issued his survey report on October 10, 2014. Mr. Blomquist noted the following items of damage: (a) damage to the spud pockets, (b) possible hull damage with a minor fuel leak and possible

1 water in the fuel, (c) damage to the winches, (d) damage to the walking spud traveler
 2 (otherwise referred to in this complaint as the “trolley”), (e) replacement of two spuds, and (f)
 3 possible damage to the “walking” spud. The survey also makes note of the following:
 4 “necessary drydocking”, “necessary laydays”, “necessary environmental protection and
 5 services fees”, “necessary weather protection”, “necessary crane services”, “necessary
 6 recoating of all damage affected surfaces”. Lastly, the report provides that the “listed
 7 damages are as evident from a visual inspection only”.

8 25. Two preliminary repair estimates, to repair the MYRTLE IRENE, were obtained.

9 26. The first repair estimate came from Derek Mining Company, and totaled
 10 \$2,578,150.00. Derek Mining Company is small welding company in Nome. It is not a
 11 shipyard. Underwriters received the Derek Mining estimate on October 13, 2014.

12 27. The second repair estimate came from Vigor Shipyard in Seward, Alaska, and totaled
 13 \$2,644,232.00. The Vigor Shipyard estimate was provided to Underwriters on December 15,
 14 2014.

15 28. Neither of the repair estimates cover the full scope of the cost of repairs to restore the
 16 MYRTLE IRENE to a seaworthy vessel.

17 29. The actual total cost of the *covered* repairs are expected to well-exceed \$3,000,000.00.

18 30. ASM submitted a formal notice for the Constructive Total Loss (“CTL”) and
 19 abandonment of the MYRTLE IRENE to the defendants on October 24, 2014. ASM tendered
 20 its CTL and abandonment claim, based upon, but not limited to, the following factors: (1) the
 21 preliminary repair estimates, (2) plaintiff’s knowledge of the additional costs required to
 22 repair a vessel like the MYRTLE IRENE in a remote region such as Nome, Alaska, (3) the
 23 additional hull repair work identified by Vigor Shipyard and touched upon by the
 24 Underwriters’ surveyor Mr. Blomquist, (4) the additional cost to transit the MYRTLE IRENE
 25

1 from Nome to Vigor's shipyard in Seward, and (5) the general business knowledge that actual
2 repair costs regularly exceed vendor estimates.

3 31. On December 5, 2014, defendants formally denied ASM's CTL and abandonment
4 claim. In addition, Underwriters denied covering the costs of repairing the MYRTLE IRENE,
5 except for the following: (1) the cost of repairing the two stern spud wells; and (2) 50% of the
6 cost for: (a) necessary painting, (b) work environment, and (c) the crane rental. Underwriters
7 denied the remainder of the repair costs, based exclusively on the wording in the Limited
8 Machinery Coverage condition as the basis for their denial. Specifically, Underwriters cited
9 the "any other deck machinery" line within the exclusionary clause as the sole basis for
10 denying ASM's claims. In other words, Underwriters' contention is that all damage line
11 items that they refused to cover are "any other deck machinery" within the Policy.

12 32. Plaintiff formally protested Underwriters' denial of coverage on February 13, 2015, in
13 a letter sent to each of the Underwriters.

14 33. Underwriters responded to plaintiff's demand in writing on February 19, 2015. In that
15 letter, Underwriters admitted to an error in their coverage determination; and acknowledged
16 that the spud columns are, in fact, *not excluded* from coverage under the Policy. Defendants
17 thereby agreed to cover the cost of replacing two of the three spud columns. In other words,
18 the spud columns themselves are not "any other deck machinery" under the Policy. To date,
19 defendants have made no further coverage concessions.

20 34. Plaintiff contends that the MYRTLE IRENE is a CTL and is entitled to abandon her
21 pursuant to the Policy, or in the alternative, that far more coverage is afforded under the
22 Policy than defendants have admitted to.

23 **CLAIMS FOR RELIEF**

24 **I. Breach of Contract.**

25 35. Plaintiff incorporates the allegations in paragraphs 1 – 34, above.

36. Underwriters' denial of coverage for the physical loss or damage to the MYRTLE IRENE, and other expenses due under the Policy, constitutes a breach of contract for which defendants are liable in their respective subscription percentages and in an amount to be proven at trial.

37. Underwriters' denial of coverage for the loss or damage to the MYRTLE IRENE is covered by the Policy and thereby creates liability for all of plaintiff's attorney fees and costs under *Olympic Steamship v. Centennial Insurance*, 117 Wash.2d 37, 811 P.2d 673 (1991).

PRAYER FOR RELIEF

Plaintiff prays for judgment against defendants as follows:

1. Award of damages for the wrongful denial of coverage for all amounts owed to the plaintiff under the Policy;
2. Award of prejudgment interest;
3. Award of plaintiff's reasonable attorney fees and costs; and
4. Such other and further relief this Court deems just and equitable.

Dated this 10th day of April, 2015.

Respectfully Submitted,

PIPINICH LAW, PLLC

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on April 10, 2015, I electronically filed a copy of the foregoing
COMPLAINT FOR DAMAGES through the Court's CM/ECF system on this Honorable Court.

Signed and dated at Seattle, Washington on this 10th day of April, 2015.

/s/ Louisa M. Florio
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